



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

ORIGINAL



SDMS DocID 2185800

MAY 04 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FIELD(1)
FIELD(2)
FIELD(3)
FIELD(4)
FIELD(5)

Generator
Transporter/
Broker SNL

Re: Malvern TCE Superfund Site: "Special Notice" for Negotiations for Remedial Design & Remedial Action/Demand for Payment of Costs

Dear FIELD(3):

This letter relates to the liability of FIELD(1) in connection with the Malvern TCE Superfund Site, Chester County, Pennsylvania ["Site"].

INTRODUCTION

The United States Environmental Protection Agency ["EPA" or "Agency"] has conducted and overseen activities undertaken at the Site in response to the release and/or threat of release of hazardous substances, pollutants, or contaminants into the environment. By letter dated November 14, 1996, EPA notified you/your company of its potential liability for such response action pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ["CERCLA"], 42 U.S.C. § 9607. EPA has selected remedial action for implementation at the Site, which remedial action is described in a document called a Record of Decision ["ROD"] issued by EPA on November 26, 1997. EPA is now contacting you in an attempt to resolve your liability with respect to the above-captioned matter. Toward that end, this letter contains:

1. A formal demand for reimbursement of costs that have been paid (including interest thereon) and that are to be paid (which are subject to interest) in conducting and/or overseeing response actions at the Site ("Demand for Payment");
2. Notification that a limited period of formal negotiations for an agreement under which FIELD(1) will implement the requirements of the ROD begins with your receipt of this letter ("Special Notice");

Customer Service Hotline: 1-800-438-2474

3. General and site-specific information to assist you in these negotiations; and
4. A model consent decree, and model administrative consent order, as described below.

DEMAND FOR PAYMENT

As of June 17, 1997, EPA has paid costs in excess of \$2,214,705 for response activities related to the Site. Although this figure may not include all applicable costs incurred and paid to date, the figure represents EPA's most recent calculation. Furthermore, additional costs, including oversight and related enforcement costs may continue to be incurred.

EPA may recover some or all past costs from the de minimis parties pursuant to a de minimis settlement. EPA may offset the demand for past costs of \$2,214,705 by the amount received pursuant to the de minimis settlement. Failure to pay, or delay in payment, may subject **FIELD(1)** to liability for increased costs associated with these past costs including, but not limited to, interest and enforcement costs. Interest on amounts recoverable begins to accrue as of the date of receipt of this letter as provided by section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

You may contact the following person to arrange for payment of the above-described costs:

Joan A. Johnson
Assistant Regional Counsel (3RC21)
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107
(215) 566-2619

ORPHAN SHARE

EPA, in accordance with its Orphan Share Policy, agrees to reduce the amount of its claims for past response costs and future oversight costs, in the amount of \$290,302, in consideration of the execution of a Consent Decree for Remedial Design/Remedial Action at the Malvern TCE Superfund Site.

SPECIAL NOTICE NEGOTIATIONS MORATORIUM

EPA has determined that use of the "special notice" procedures specified in section 122 of CERCLA, 42 U.S.C. § 9622, will facilitate a settlement between EPA and **FIELD(1)** for implementation of this remedial action at the Site. Therefore, pursuant to that section, your

receipt of this letter triggers a sixty (60) day moratorium on certain EPA response activities at the Site. During this sixty (60) day period, **FIELD(1)** is invited to submit a good faith proposal (defined below) to conduct and/or finance such remedial action and negotiate a consent decree (described below) under which **FIELD(1)** will perform such work. If EPA determines that such a good faith offer has been timely received, the Agency will provide an additional sixty (60) days to finalize the consent decree. When approved by EPA and the United States Department of Justice, the consent decree will then be filed in federal court.

EPA encourages **FIELD(1)** participation by submitting a good faith proposal as defined below.

Good Faith Proposal

A good faith proposal to conduct or finance the remedial action is a written proposal that demonstrates **FIELD(1)**'s qualifications and willingness to perform such work and includes the following elements:

1. A statement of willingness and financial ability by **FIELD(1)** to implement the requirements of the ROD and proposed consent decree;
2. A demonstration of **FIELD(1)**'s technical capability to conduct the work, including the identification of the firm(s) **FIELD(1)** intends to retain to conduct all or portions of such work or a description of the process you will use to select the firm(s);
3. A statement of **FIELD(1)**'s willingness and ability to reimburse EPA for costs incurred in overseeing the performance of the work as well as EPA's past costs (as described above);
4. Comments, if any, on the proposed consent decree and on the proposed administrative order (see below);
5. The name, address, telephone, and telefax number (if any) of the person(s) who will represent **FIELD(1)** in negotiations for a consent decree.

Among comments received from PRPs by EPA in response to the September 1997 draft Volumetric Ranking Summary ("VRS") was the suggestion that liability at the Site should be divided between the Main Plant Area ("MPA") and the Former Disposal Area ("FDA"). EPA is willing to consider any good faith offer from Site PRPs, including any offers intended by the PRPs to address such liability concerns, that provides for complete performance of the work required by the ROD.

Consent Decree

Section 122(d)(1)(A) of CERCLA, 42 U.S.C. § 9622(d)(1)(A), requires that settlements for remedial action be entered in the appropriate federal district court in the form of a consent decree. Enclosed with this letter you will find a site-specific draft of EPA's model consent decree. (Attachment A) This model consent decree provides boilerplate language for most provisions in order to standardize CERCLA consent decrees as much as possible and expedite CERCLA settlements. The United States will commence negotiations with a document containing language which, for the most part, is the same language the Government will expect in a final settlement because it reflects legal and procedural terms that have been found acceptable to both EPA and the regulated community in a large number of situations. Your decision to submit a good faith proposal to perform the work should be made with the understanding that the terms appearing in the draft consent decree are substantially the terms which EPA expects to appear in the final settlement.

The Commonwealth of Pennsylvania has indicated that it wishes to participate in the consent decree negotiations. EPA anticipates receiving comments from the Commonwealth on the proposed consent decree provisions, including, but not limited to specification as to the amount of past costs for which the Commonwealth will seek reimbursement from the settling parties.

Also enclosed find a proposed administrative consent order ("Order") (Attachment B) which provides that **FIELD(1)** will commence remedial design activities upon your signature on the consent decree and the effective date of the Order. The Order need not be entered in Federal court and will enable **FIELD(1)** to commence design activities prior to entry of the remedial action consent decree. The Order will remain in effect until the consent decree is entered. EPA encourages **FIELD(1)** to enter into such an Order.

PRP Steering Committee

EPA encourages good-faith negotiations between **FIELD(1)** and EPA and between **FIELD(1)** and other potentially responsible parties ["PRPs"]. To facilitate these negotiations, EPA has enclosed a list of other PRPs identified in Attachment C to whom this notification has been sent. Inclusion on, or exclusion from, this list does not constitute a final determination by EPA concerning the liability of any party with respect to the Site.

PRP Response/EPA Contact Person

FIELD(1) is encouraged to contact EPA as soon as possible to state its willingness to participate in negotiations relating to the Site. Specifically, **FIELD(1)** has sixty (60) calendar days from

receipt of this letter to provide EPA with a written proposal as described above. You may respond individually or through a steering committee. If EPA does not receive a timely response, EPA will assume that **FIELD(1)** does not wish to negotiate a resolution of its liabilities in this matter and that **FIELD(1)** has declined any involvement in performing the response activities described above. In such event, EPA may, among other things, issue an administrative order directing **FIELD(1)** to perform certain response actions; seek to file an action in federal court to obtain a court order directing **FIELD(1)** to perform certain response actions; and/or perform such response action and seek reimbursement from liable parties.

If a proposal is submitted which EPA determines is not a good faith offer, you will be notified in writing of EPA's decision to end the negotiations moratorium and the reasons therefore. **FIELD(1)** may be liable for performing certain response actions pursuant to a unilateral administrative order or court order and/or reimbursing EPA for the cost of certain response actions performed by EPA.

Your response to this letter, including written proposals to perform the remedial action selected for the Site, should be sent to:

Linda R. Dietz, 3HS21
Remedial Project Manager
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107
(215) 566-3195

DE MINIMIS PARTIES

On April 30, 1998, EPA offered a de minimis settlement to the group of de minimis parties identified in Attachment D whose waste contribution is less than or equal to 0.75%. Monies collected by EPA from the de minimis settlement will be used to reimburse EPA's past costs and deposited into the EPA Hazardous Substances Superfund. Any remaining funds collected in excess of EPA's past costs will be deposited into a Special Account which EPA will establish for the Site. The attached Consent Decree describes how monies from the de minimis settlement will be distributed to Settling Defendants who agree to perform the RD/RA.

Parties who have received de minimis settlement offers have been informed by EPA that any party wishing to join the non-de minimis parties in negotiating and performing the RD/RA, which would entitle such party to obtain Orphan Share Funding, may elect to do so, provided such parties do so in accordance with the special notice procedures set forth in this letter.

ADMINISTRATIVE RECORD

Pursuant to section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA has established an administrative record which contains documents forming the basis of EPA's selection of response action for the Site. The administrative record file is available to the public for inspection and comment. You may wish to review the administrative record to assist you in responding to this letter, but your review should not delay such response. Copies of the file are located both at the EPA Region III office and:

Chester County Library
400 Exton Square Parkway
Exton, PA 19341
(610) 363-0884

EPA will consider comments received, if any, after the close of the comment period in accordance with 40 C.F.R. § 300.825.

Note that this letter pertains only to the remedy specifically described in the November 26, 1997 ROD.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions pertaining to this matter, please direct them to Joan A. Johnson, (215) 566-2619.

Sincerely,

Abraham Ferdas, Acting Director
Hazardous Site Cleanup Division

Special Notice Letter for Remedial Design/Remedial Action/
Malvern TCE Superfund Site

7

w/o Enclosures

cc: April Flipse, PADEP ✓
Joan Johnson, 3RC21 ✓
Linda Dietz (3HS21).
Mark Barash (DOI) ✓
Nancy Briscoe (NOAA) ✓
Robert LeFevre (DOJ) ✓

Enclosures:

Attachment A: Draft Consent Decree

**Attachment B: Draft Administrative Order on Consent
for Remedial Design**

Attachment C: List of SNL Recipients

**Attachment D: Generator Final Volumetric Ranking Summary
Broker/Transporter Final Volumetric Ranking Summary
Volumetric Ranking Summaries Review and Methodology
Volumetric Ranking Summaries Challenges and EPA Response**

ATTACHMENT A

CONSENT DECREE

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**UNITED STATES OF AMERICA and
COMMONWEALTH OF
PENNSYLVANIA;**

V.

Defendants.

CONSENT DECREE

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Malvern TCE Superfund Site in East Whiteland Township, Chester County, Pennsylvania, together with accrued interest; (2) a declaratory judgment against Defendants for liability for future response costs; (3) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (4) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the "Commonwealth") on _____, 19__ of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Natural Resources Trustees at the United States Department of the Interior and the United States Department of Commerce- National Oceanic and Atmospheric Administration on _____, 19__ of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix "B," by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in February, 1996, a Remedial Investigation and Feasibility

Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA completed a Remedial Investigation ("RI") Report in January, 1997, and EPA issued a Feasibility Study ("FS") Report in June, 1997.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 23, 1997, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on November 26, 1997, on which the Commonwealth has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA and the Commonwealth, EPA and the Commonwealth believe that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this

Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the Commonwealth and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall

condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

"Commonwealth Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to,

payroll costs, contractor costs, travel costs, laboratory costs, and any costs that may be incurred by the Commonwealth pursuant to Sections VII, X (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), and XVI. Commonwealth Future Response Costs also shall include all Interim Response Costs incurred by the Commonwealth and all Interest on Commonwealth Past Response Costs that accrues pursuant to 42 U.S.C. § 9607(a) during the period from (most recent cost update) to the date of entry of this Consent Decree.

"Commonwealth Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the Commonwealth paid at or in connection with the Site through the [date of most recent cost update], plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a).

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Duly Authorized Representative" shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, X (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XVI, and Paragraphs 102 and 103 of Section XXII. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 18, 1997, to the date of entry of this Consent Decree.

"HSCA" shall mean the Pennsylvania Hazardous Sites Cleanup Act, P.L. 756, No. 108, as amended, 35 P.S. §§ 6020.100 et seq.

"Institutional Controls" shall mean land and/or water use restrictions including, but not limited to, restrictions in the form of contractual agreements, restrictive easements/covenants that run with the land, and governmental controls.

"Interim Response Costs" shall mean all costs, including direct and indirect costs: (i) paid by the United States in connection with the Site between June 18, 1997, and the effective date of this Consent Decree; (ii) paid prior to June 18, 1997, but not included in the June 17, 1997 cost report; or (iii) incurred prior to the effective date of this Consent Decree but paid after that date.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the

U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Matters Addressed" shall mean all response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the Commonwealth, or any other person with respect to the Site. "Matters Addressed" in this settlement do not include those response costs or response actions as to which the United States or, as appropriate, the Commonwealth, has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the Commonwealth asserts rights against Settling Defendants coming within the scope of such reservation.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

"Owner Settling Defendants" shall mean those Parties identified in Appendix "C."

"PADEP" shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the State.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the Commonwealth of Pennsylvania, and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 17, 1997, which are referenced in the June 17, 1997 cost report, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement set forth on pages 52 to 63 of the ROD attached hereto as Appendix "A" and those that are developed by the Settling Defendants and approved by EPA during Remedial Design.

"Plaintiffs" shall mean the United States and the Commonwealth of Pennsylvania.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Malvern TCE Superfund Site signed on November 26, 1997, by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix "A."

"Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix "B" (Non-Owner Settling Defendants) and Appendix "C" (Owner Settling Defendants).

"Site" shall mean the Malvern TCE Superfund Site, encompassing approximately 5 acres, located along the southeast side of Bacton Hill in East Whiteland Township, Chester County, Pennsylvania, and depicted in the ROD.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Unreimbursed Past Response Costs" shall mean any Past Response Costs, as such term is defined in Paragraph 4 of this Consent Decree, incurred by the United States at or in connection with the Site, for which the United States has not received reimbursement from any potentially responsible party at the Site, including any De Minimis Settlers, as referred to in Paragraph 68 of this Consent Decree.

"Waste Material" shall mean: (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work as specified in Section VI of this Consent Decree. Settling Defendants also shall, as provided in this Consent Decree, reimburse: i) the United States for Unreimbursed Past Response Costs and Future Response Costs; and ii) the Commonwealth for Commonwealth Past Response Costs and Commonwealth Future Response Costs.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the Commonwealth under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling

Defendants shall complete all such requirements.

c. In the event that any of the Settling Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Defendant shall notify the United States within three (3) days of such filing.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued

pursuant to any federal, state or local statute, regulation, or ordinance.

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Owner Settling Defendants that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendants shall submit to EPA for review and approval a notice to be filed with the Office of the Prothonotary for Chester County, Commonwealth of Pennsylvania, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on November 26, 1997, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendants shall file the notice within ten (10) days of EPA's approval of the notice. The Owner Settling Defendants shall provide EPA with a certified copy of the recorded notice within ten (10) days of recording such notice.

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendants conveying the interest shall give the grantee written notice of:

- i. this Consent Decree;
- ii. any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section X (Access and Institutional Controls); and

iii. any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as “restrictive easements”) pursuant to Section X (Access and Institutional Controls).

At least thirty (30) days prior to such conveyance, the Owner Settling Defendants conveying the interest shall also give written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendants’ obligations under this Consent Decree, including, but not limited to, any obligation to provide or secure access and Institutional Controls, as well as to abide by such Institutional Controls, pursuant to Section X (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendants to comply with all provisions of this Consent Decree, absent prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

10. Selection of Contractors.

a. Supervising Contractor.

i. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), IX (Quality Assurance, Sampling, and Data Analysis), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the

selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the Commonwealth. Within ten (10) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or acceptance of the selection of such Supervising Contractor. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the Commonwealth and must obtain a notice of acceptance of such change from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the Commonwealth a list of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Defendants may select any contractor from that list and shall notify EPA and the Commonwealth of the name of the contractor selected within twenty-one (21) days of EPA's written notice.

iii. If EPA fails to provide written notice of its acceptance or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent

Decree.

b. Other Contractors and Subcontractors.

The Settling Defendants shall submit to EPA and the Commonwealth for acceptance by EPA the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling Defendants shall submit to EPA and the Commonwealth within ten (10) days of receipt of EPA's notice a list of at least three contractors or subcontractors, including the qualifications of each, that would be acceptable to them. EPA will provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling Defendants may select any contractor or subcontractor from that list and shall notify EPA and the Commonwealth of the name of the contractor or subcontractor selected within five (5) days of EPA's written notice.

11. Remedial Design/Remedial Action.

a. Within 30 days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the Commonwealth a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the extent such

persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD and this Consent Decree. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Defendants shall also submit to EPA and the State, at the time the Remedial Design Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

- i. a Site Management Plan;
- ii. a Sampling and Analysis Plan, containing:
 - (1) a Field Sampling Plan; and
 - (2) a Quality Assurance Project Plan ("QAPP");
- iii. a Remedial Design Contingency Plan;
- iv. a Treatability Study Work Plan which includes, at a minimum, plans and schedules for the preparation and submission of a Treatability Study Evaluation Report;
- v. plans and schedules for the preparation and submission of a Preliminary Design Submittal (the preliminary design begins with the initial design and ends with the completion of approximately 30% of

the design effort) containing, at a minimum:

- (1) a Design Criteria Report, including:
 - (a) project description;
 - (b) design requirements and provisions;
 - (c) preliminary process flow diagrams;
 - (d) operation & maintenance requirements;
- (2) a Basis of Design Report, including:
 - (a) justification of design assumptions;
 - (b) a project delivery strategy;
 - (c) remedial action permits plan for off-site permits;
 - (d) preliminary easement/access requirements;
- (3) preliminary Drawings and Specifications, including:
 - (a) outline of general specifications;
 - (b) preliminary schematics and drawings;
 - (c) chemical and geotechnical data (including data from pre-design activities);
- (4) a Value Engineering Screen; and
- (5) a preliminary Remedial Action schedule.

vi. plans and schedules for the preparation and submission of an intermediate design submittal which shall be submitted at approximately 60% percent of the design effort and shall address all of EPA's comments to the preliminary design and, at a minimum,

additionally include:

- (1) a revised Design Criteria Report, if necessary;
- (2) a revised Basis of Design Report, if necessary;
- (3) any value engineering study results;
- (4) a revised Remedial Action schedule;
- (5) a preliminary Remedial Action contingency plan;
- (6) a preliminary Remedial Action Health and Safety Plan ("HASP") for EPA acceptance;
- (7) a preliminary Remedial Action waste management plan; and
- (8) a preliminary Remedial Action Sampling and Analysis Plan.

vii. plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the intermediate design, and, at a minimum, additionally include:

- (1) a preliminary Operation & Maintenance Plan;
- (2) a preliminary Construction Quality Assurance Plan ("CQAP") (the CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);

- (3) a preliminary Remedial Action decontamination plan;
 - (4) a draft final Remedial Action schedule;
 - (5) a draft final Remedial Action contingency plan; and
 - (6) a draft final Remedial Action HASP for EPA acceptance.
- viii. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:
- (1) a final Remedial Action schedule;
 - (2) a final Remedial Action contingency plan;
 - (3) a final Remedial Action HASP for EPA acceptance;
 - (4) a final Remedial Action waste management plan;
 - (5) a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;
 - (6) a final Design Criteria Report;
 - (7) a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);
 - (8) a final Basis of Design Report;
 - (9) final Drawings and Specifications;
 - (10) a revised Operation & Maintenance Plan and a schedule for

submission of the final Operation & Maintenance Plan;

- (11) a final Construction Quality Assurance Plan;
- (12) a final Remedial Action decontamination plan; and
- (13) a final project delivery strategy.

ix. a Remedial Design schedule.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and the Commonwealth, Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendants shall submit to EPA and the Commonwealth all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design field activities at the Site prior to approval of the Remedial Design Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in Section XII (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be enforceable under this Consent Decree. The Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. The Settling Defendants shall submit all plans, submittals, or other deliverables

required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

12. Resident Engineer. Following EPA approval, approval with conditions, or modification by EPA, as provided in Section XII (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, and prior to commencement of any on-site Work under the Remedial Action Work Plan, the Settling Defendants shall submit to EPA the name and qualifications of a Resident Engineer to be present at the Site during construction to ensure that the Work is performed in accordance with the approved Remedial Action Work Plan. The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Defendants shall submit to EPA and the Commonwealth a list of at least three replacements, including the qualifications of each, who would be acceptable to them within five (5) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Defendants may select any replacement from the EPA notice and shall notify EPA and the Commonwealth of the name of the replacement selected within three (3) days of EPA's written notice. Settling Defendants shall ensure that the Resident Engineer performs on-site inspections as necessary to ensure compliance with the approved Remedial Action Work Plan and that the results of such

inspections are promptly provided to Settling Defendants, EPA, and the Commonwealth. The Resident Engineer may act as the QA Official.

13. The Settling Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the Work.

a. If EPA determines that modification of the Work is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may: (i) require that such modification be incorporated into the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or any other plan relating to such Work; and/or (ii) require that Settling Defendants submit a plan for EPA approval which incorporates such modification to the Work and implement such approved plan; provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14 and Paragraphs 60 and 61 only, the "scope of the remedy selected in the ROD" means:

- tasks employing a technology or combination of technologies discussed in Section X of the ROD to achieve and maintain the objectives described in the ROD. The technologies discussed in Section X of the ROD include:

Main Plant Area (as referred to and described in the ROD) - groundwater pump and treat; capping of the Main Plant Area.

Former Disposal Area (as referred to and described in the ROD) - excavation of soils; natural attenuation of groundwater.

- tasks associated with monitoring of Site conditions and the effectiveness of the Remedial Action.
- implementation of Institutional Controls, as defined herein.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 82 (record review). The Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or in work plans developed in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will achieve the Performance Standards.

16. a. All Waste Material that Settling Defendants remove from the Site shall be disposed of or treated at a facility regulated by RCRA in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), the EPA "Revised Procedures for Planning and Implementing Off-site Response Actions," 40 C.F.R. § 300.440, and all other applicable federal, state, and local laws and regulations.

b. Settling Defendants shall, prior to any off-site shipment of Waste Material from

the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i. The Settling Defendants shall include in the written notification the following information, where available:

- ii. the name and location of the facility to which the Waste Material is to be shipped;
- iii. the type and quantity of the Waste Material to be shipped;
- iv. the expected schedule for the shipment of the Waste Material; and
- v. the method of transportation.

The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.b. as soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. **Periodic Review.** Settling Defendants shall conduct any studies and investigations as

requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment, at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 97 or Paragraph 98 (United States' reservations of liability based on unknown conditions or new information) are satisfied. If EPA requires Settling Defendants to undertake such further actions pursuant to this Paragraph, Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute:

a. EPA's determination that the reopener conditions of Paragraph 97 or Paragraph 98 of Section XXII (Covenants Not To Sue by Plaintiffs) are satisfied;

b. EPA's determination that the Remedial Action is not protective of human health and the environment; or

c. EPA's selection of the further response actions.

Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 82 (record review).

21. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. TECHNICAL IMPRACTICABILITY

This Section VIII applies solely to the groundwater extraction and treatment system remedy as defined in Section X of the ROD:

22. The Settling Defendants may petition EPA to waive compliance with one or more of the Performance Standards for groundwater contaminants resulting from non-recoverable free phase or residual quantities of dense non-aqueous phase liquids ("DNAPLs") present in the subsurface, based on a demonstration that it is technically impracticable, from an engineering perspective, to attain those standards.

23. The determination of whether attainment of a particular Performance Standard is technically impracticable will be made by EPA, and will be based on the engineering feasibility and reliability of the remedy.

24. EPA will consider a petition for a waiver of Performance Standards on technical impracticability grounds only after the selected groundwater remedy has been functioning and operational for a sufficiently long time period to make a reliable prediction concerning its ability to achieve the Performance Standards. This determination will be made by EPA based on Site-

specific data and conditions. If the first petition is rejected, a subsequent petition will be considered by EPA only if EPA determines that it is based on significant new Site-specific data which could not have been developed at the time the previous petition was submitted.

25. Neither the submission of a petition by Settling Defendants nor the granting of a waiver of one or more Performance Standards by EPA pursuant to this Section shall relieve Settling Defendants of their obligation to:

- a. continue to operate the groundwater remedy until the time specified by EPA;
- b. attain Performance Standards for any contaminants for which EPA has not specifically granted a waiver; and
- c. complete any other obligation under this Consent Decree.

26. Such a petition shall include, at a minimum, the information and analyses required by EPA guidance and the Site-specific information described in Subparagraphs 26.a. through 26.l., as follows:

- a. a list of each Performance Standard for which a waiver is sought, and the spatial limits for which they are sought. The justification for a waiver required by items 26.b. through 26.l. below must be made for each contaminant or class of contaminants for which a waiver is sought;
- b. a description of known or suspected groundwater contaminant sources at the Site. The petition also shall describe source control and removal efforts that have been implemented and the effectiveness of those efforts;
- c. comprehensive groundwater monitoring data and an evaluation of the groundwater remedy implemented, along with any other remediation actions performed which

enhanced or affected the Remedial Action. The monitoring data and performance evaluation shall demonstrate, using an appropriate engineering and statistical analysis, that the groundwater remedy has been operating for a sufficiently long period of time, as determined by EPA, to permit a reliable analysis of its performance and its ability to achieve Performance Standards. The petition also shall demonstrate that the remedy has been designed, constructed, and operated in a manner which is consistent with the Remedial Design and Remedial Action Work Plans and the conceptual models for Site contamination, and that the system has been modified or enhanced to the extent practicable to optimize its performance in an effort to attain the Performance Standards;

d. a description of the conceptual model for Site contamination, including geologic, hydrogeologic, and geochemical characterizations. A description of the distribution; characteristics, migration, potential migration and fate; and quantities of contaminants present at the Site. These descriptions shall incorporate pertinent data obtained during the design, construction, and operation of the remedial system, as well as information obtained during previous Site characterization efforts;

e. an analysis of the performance of the groundwater remedy which describes the spatial and temporal trends in groundwater contaminant concentrations within the groundwater plumes; for example, whether contaminant migration has been effectively prevented, as well as any reductions or change in the overall size and location of the groundwater plume, or stabilized or very slow decreases in contaminant concentrations. The petition shall discuss the hydrogeochemical factors which influence the remedy's ability to achieve the Performance Standards, and demonstrate how these factors inhibit the remedial system achieving the

Performance Standards;

f. the mass of contaminants removed from the groundwater by the Remedial Action system, and an estimate of the mass of contaminants remaining, including the degree of uncertainty involved in this estimate;

g. a demonstration, including appropriate engineering analysis, that other conventional or innovative technologies that are potentially applicable at the Site cannot attain the Performance Standards in a manner that is practicable from an engineering perspective. This demonstration should include a prediction of the level of cleanup other technologies can attain;

h. a predictive analysis of the approximate time frame required to achieve the Performance Standards with the existing groundwater remedy, and any alternative remedial strategies, if applicable, using methods appropriate for the data and the site-specific conditions. Such analyses should also address the uncertainty inherent in these predictions;

i. for the implemented remedy and for any alternative remedial strategies proposed as part of this petition, identification of the potential pathways by which humans and the environment are or may become exposed to the contaminated groundwater left in place. Contamination concentration and other data needed for EPA to perform risk analyses shall be provided as part of the petition;

j. a description of the proposed alternative remedial strategy, or a comparison of two or more strategy options, proposed to be implemented by the Settling Defendants if a waiver is granted, and the level of cleanup and control of hazardous substances, pollutants, and contaminants the proposed alternative strategy or strategies will attain. Alternative remedial strategies must attain a level of cleanup and control of further releases which ensure protection

of human health and the environment, and prevent further migration of contaminated groundwater. Alternative remedial strategies may include the establishment of alternative Performance Standards, site-specific cleanup levels, and other alternative remediation requirements to ensure protectiveness. Proposed modifications to the existing remedy, and any additional response actions proposed to be undertaken, shall be described by the Settling Defendants in detail. EPA will make the final determination regarding the components of the alternative remedial strategy which shall be implemented at the Site by the Settling Defendants;

k. a description of any additional groundwater monitoring required to verify compliance with the alternative Performance Standards or remedial requirements. EPA will make the final determination regarding the scope of the groundwater monitoring requirements under the alternative remedial strategy; and

l. other information or analyses not included above, but which Settling Defendants or EPA considers appropriate to making a determination on the petition.

27. Upon receipt of all information required by the previous Paragraph, EPA will review and consider the information in the petition and any other relevant information. After opportunity for review and comment by the Commonwealth, EPA will determine:

- a. whether compliance with any of the Performance Standards shall be waived;
- b. what, if any, alternative remediation requirements, including alternative Performance Standards and other protective measures, will be established by EPA;
- c. whether modifications to the groundwater contamination are required; and
- d. whether revised interim milestone and completion dates are needed for attainment of Performance Standards or alternative Performance Standards under this Consent

Decree.

EPA's determination on the petition will be consistent with the National Contingency Plan ("NCP"), Section 121(d) of CERCLA, and any other applicable laws, regulations, and guidance in effect at the time.

28. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, grants any petition or other relief pursuant to this Section, that decision will be reflected in a post-ROD decision document, as required by the NCP. If modification of this Consent Decree is required to implement EPA's decision, such modification will be filed and, if necessary, Court approval will be sought in accordance with Section XXXII of this Consent Decree (Modification).

29. Upon issuance of EPA's post-ROD decision document, filing of the revised Statement of Work and Consent Decree with the Court and, if necessary, issuance of a court order approving the modification, Settling Defendants shall implement the modifications selected by EPA to the groundwater portion of the Remedial Action or additional response actions relating to groundwater contamination, and achieve and maintain all Performance Standards, alternative Performance Standards, and remediation requirements established pursuant to this Section. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute that EPA's issuance of its post-ROD decision document is arbitrary and capricious or otherwise not in accordance with the law. Such a dispute shall be resolved pursuant to Paragraph 82, Section XX (Dispute Resolution) of this Consent Decree. However in the event EPA determines that the groundwater portion of the Remedial Action is not technically impracticable and that no post-ROD decision document is necessary, such a determination shall

not be subject to review under the provisions of Section XX (Dispute Resolution) of this Consent Decree and shall not otherwise be judicially reviewable. Unless expressly modified by EPA's decision on the petition submitted hereunder, all requirements of this Consent Decree, including Settling Defendants' obligation to achieve the alternative Performance Standards and to conduct long-term groundwater monitoring, shall continue in full force and effect.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

30. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (US EPA Quality Assurance Management Staff: August 1994) (EPA QA/R-5); "EPA NEIC Policies and Procedures Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1994); "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the

Commonwealth, a QAPP for the Work that is consistent with the NCP and the guidance documents cited above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Settling Defendants shall submit to EPA the selected laboratory's(ies') QAPP and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation ("PE") results, equipment lists and personnel resumes. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA. At the request of EPA, Settling Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling Defendants shall report serious deficiencies, including all those which adversely impact data quality,

reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Defendants knew or should have known of the deficiency.

31. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Defendants shall notify EPA and the Commonwealth not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA and the Commonwealth shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Work.

32. Settling Defendants shall submit to EPA and the Commonwealth five (5) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

33. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

34. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States, the Commonwealth, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purposes of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- i. monitoring the Work;
 - ii. verifying any data or information submitted to the United States or the Commonwealth;
 - iii. conducting investigations relating to contamination at or near the Site;
 - iv. obtaining samples;
 - v. assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi. implementing the Work pursuant to the conditions set forth in Paragraph 103 of this Consent Decree;
 - vii. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV;
 - viii. assessing Settling Defendants' compliance with this Consent Decree;
- and
- ix. determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, the following land and/or water use restrictions as set forth in Section X of the ROD:

- no newly commenced or expanded groundwater pumping in the aquifer shall be implemented which will adversely affect the plume migration;
- human consumption of contaminated groundwater shall be prevented. Drinking water supply wells shall not be installed in the area of a contaminated plume at and/or emanating from the Site;
- no new development at or near the Site shall adversely affect the natural hydraulic containment and plume migration; and

c. execute and record in the Office of the Prothonotary for Chester County, Commonwealth of Pennsylvania, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 34.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 34.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives; (ii) the Commonwealth and its representatives; (iii) the other Settling Defendants and their

representatives; and/or (iv) other appropriate grantees. If EPA so requests, Settling Defendants shall, within forty-five (45) days of EPA's request, submit to EPA for review and approval with respect to such property:

i. a draft easement that is enforceable under the laws of the Commonwealth of Pennsylvania, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of the easements, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Office of the Prothonotary for Chester County, Commonwealth of Pennsylvania. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

35. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the Commonwealth, as well as their representatives

(including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 34.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 34.b. of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation with the Office of the Prothonotary for Chester County, Commonwealth of Pennsylvania, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 34.a. of this Consent Decree; and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 34.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives; (ii) the Commonwealth and its representatives; (iii) the other Settling Defendants and their representatives; and/or (iv) other appropriate grantees.

Within forty-five (45) days of EPA's request, Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. a draft easement that is enforceable under the laws of the Commonwealth of Pennsylvania, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40

U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Office of the Prothonotary for Chester County, Commonwealth of Pennsylvania. Within thirty (30) days of filing the easements, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

36. For purposes of Paragraph 35 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water restriction agreements required by Paragraphs 35.a. or 35.b. of this Consent Decree are not obtained within forty-five (45) days of any request by EPA that Settling Defendants obtain such access or land/water restriction agreements, or any access easements or restrictive easements required by Paragraph 35.c. of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of EPA's request for such easements, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 35 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use

restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

37. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances, or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the Commonwealth's efforts to secure such governmental controls.

38. Notwithstanding any provisions of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

39. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the Commonwealth five (5) copies each of written monthly progress reports that:

- a. describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;
- b. include a summary of all results of sampling and tests and all other data

received or generated by Settling Defendants or their contractors or agents in the previous month;

c. identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month;

d. describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts;

e. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;

f. include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and

g. describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks.

Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 60.b. of Section XV (Certification of Completion). If requested by EPA or the Commonwealth, Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

40. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to,

implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

41. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), Settling Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 566-3255. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

42. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

43. Settling Defendants shall submit five (5) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit five (5) copies of all such plans, reports, and data to the Commonwealth.

44. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Defendants.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

45. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) modify the submission to cure the deficiencies; (iv) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (v) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

46. In the event of approval, approval upon conditions; or modification by EPA, pursuant to Paragraph 45 (i), (ii), or (iii), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the

submission to cure the deficiencies pursuant to Paragraph 45(iii) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

47. a. Upon receipt of a notice of disapproval pursuant to Paragraph 45(iv), Settling Defendants shall, within fourteen (14) days, or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 49 and 50.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 45(iv), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

48. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

49. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due

to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

50. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

51. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

Linda Dietz (3HW21)
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107
(215) 566-3195 (phone)
(215) 566-3001 (telefax)

EPA Alternate Project Coordinator:

Anthony Dappolone (3HW21)
U.S. Environmental Protection Agency

841 Chestnut Building
Philadelphia, PA 19107
(215) 566-3188 (phone)
(215) 566-3001 (telefax)

52. Within twenty (20) days of lodging of this Consent Decree, Settling Defendants and the Commonwealth will notify each other and EPA, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. The Settling Defendants' Project Coordinator and Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

53. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and Commonwealth contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator and Alternate Project Coordinator shall have authority, consistent with the National Contingency

Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

54. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

55. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of (amount to be provided based upon ROD) in one or more of the following forms:

- a. a surety bond guaranteeing performance of the Work;
- b. one or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. a trust fund;
- d. a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- e. a demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) (for these purposes, references in 40 C.F.R. § 264.143(f) to "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean the amount of financial security specified above).

56. Such financial security shall be maintained by the Settling Defendants until EPA agrees that the Work has been completed and issues a Certification of Completion in accordance with Paragraph 60.b.

57. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 55.d. of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 55.d. or 55.e., they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 55 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

58. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 55 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling

Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

59. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XV. CERTIFICATION OF COMPLETION

60. **Completion of the Remedial Action**

a. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XII (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional

engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the

Commonwealth, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

61. Completion of the Work

a. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. If, after review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in

writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

62. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 63, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the

EPA Region III Hotline at (215) 566-3255. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the Commonwealth take such action instead, Settling Defendants shall reimburse EPA and the Commonwealth all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

63. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the Commonwealth, to (i) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (ii) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXII (Covenants Not to Sue by Plaintiffs).

XVII. REIMBURSEMENT OF RESPONSE COSTS

64. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendants shall:

a. Pay to the EPA Hazardous Substance Superfund one-hundred percent (100%) of Unreimbursed Past Response Costs by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID

#0391, and DOJ case number _____. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107.

b. Pay to the Commonwealth \$_____ in the form of a certified check or checks made payable to _____, in reimbursement of Commonwealth Past Response Costs. The Settling Defendants shall send the certified check(s) to _____.

65. a. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Settling Defendants a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors on a periodic basis. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph

66. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #0391, the DOJ case number _____, and the name and address of the party making payment. The Settling Defendants shall send the check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund

Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

b. Settling Defendants shall reimburse the Commonwealth for all Commonwealth Future Response Costs not inconsistent with the National Contingency Plan. The Commonwealth will send Settling Defendants a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by the Commonwealth and its contractors on a periodic basis. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 66. The Settling Defendants shall make all payments to the Commonwealth required by this Paragraph in the manner described in Paragraph 64.b.

c. Notwithstanding Paragraph 64.a., the Settling Defendants shall be obligated to reimburse the United States for oversight costs incurred in connection with Remedial Design and oversight of Removal Actions only if the decision in United States v. Rohm & Haas Co., No. 92-1517 (3rd Cir. Aug. 12, 1993), regarding the liability of responsible parties under Section 107(a)(4)(A) of CERCLA for EPA oversight costs is reversed or overturned by the Court of Appeals for the Third Circuit, the United States Supreme Court, or the United States Congress through amendment to CERCLA or otherwise. Nothing in this Paragraph 65.c shall be deemed to be an adjudication by this Court or an admission by EPA or the United States or shall be admissible in any other proceeding as to the legal issue whether oversight costs are properly recoverable under Section 107 of CERCLA or pursuant to a settlement of such an action.

66. Settling Defendants may contest payment of any Future Response Costs under Paragraph 65 if they determine that the United States or the Commonwealth has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the Commonwealth (if the Commonwealth's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States or the Commonwealth in the manner described in Paragraph 65. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured, duly chartered, bank in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), and the Commonwealth a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States or the Commonwealth prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendants shall pay the

sums due (with accrued interest) to the United States or the Commonwealth, if Commonwealth costs are disputed, in the manner described in Paragraph 65. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the Commonwealth, if Commonwealth costs are disputed in the manner described in Paragraph 65; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States and the Commonwealth for their Future Response Costs.

67. In the event that the payments required by Paragraph 64 are not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraph 65 are not made within thirty (30) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs and Commonwealth Past Response Costs under this Paragraph shall begin to accrue thirty (30) days after the effective date of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 68.

68. Pursuant to a De Minimis Settlement agreement ("De Minimis Settlement") entered

into by EPA and certain Site PRPs ("De Minimis Settlers"), De Minimis Settlers are to pay to EPA no later than (date), \$ (amount). A copy of the De Minimis Settlement ("De Minimis Settlement") is attached hereto as Appendix "D."

69. As provided for in Paragraph 20 of the De Minimis Settlement, \$ 2,214,705.00 of the total amount to be paid by the De Minimis Settlers shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for Past Response Costs. EPA shall deposit all remaining settlement monies it receives from De Minimis Settlers pursuant to the De Minimis Settlement into an interest bearing Malvern TCE Superfund Site Special Account within the EPA Hazardous Substance Superfund, which EPA shall establish for this Site.

70. EPA shall reimburse Settling Defendants the De Minimis Settlement monies deposited by EPA into the Special Account, as referred to in Paragraph 69, plus any interest that accrues on such monies as follows:

a. Ten percent (10%) of such monies shall be reimbursed by EPA to Settling Defendants within one hundred and twenty (120) days of when the Settling Defendants commence Remedial Action construction.

b. Ten percent (10%) of such monies shall be reimbursed by EPA to Settling Defendants within one hundred and twenty (120) days of when Settling Defendants complete the soils remedy for the Formal Disposal Area, as set forth in Section X.D. of the ROD.

c. Ten percent (10%) of such monies shall be reimbursed by EPA to Settling Defendants within one hundred and twenty (120) days of when Settling Defendants complete construction of the cap to remediate Main Plant Area soils, as set forth in Section X.B. of the ROD, and construction of the groundwater pump and treat system to remediate Main Plant

Area groundwater, as set forth in Section X.C. of the ROD.

d. Seventy percent (70%) of such monies shall be reimbursed upon completion and certification by EPA of the Remedial Action, as set forth in Paragraph 60.a. of this Consent Decree.

71. Disposition of Monies in the Event Settling Defendants Fail to Complete Work. In the event that Settling Defendants fail to complete Work at the Site pursuant to this Consent Decree, EPA shall apply the remainder of the De Minimis Settlement monies in the Special Account toward the costs of completing Work at the Site. EPA may elect to reimburse any other person that performs Work at the Site pursuant to an administrative order or consent decree with EPA, in lieu of Settling Defendants, in accordance with Paragraph 70 of this Consent Decree.

XVIII. INDEMNIFICATION AND INSURANCE

72. a. The United States and the Commonwealth do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save, and hold harmless the United States, the Commonwealth, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the Commonwealth all costs

they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

b. The United States and the Commonwealth shall give Settling Defendants notice of any claim for which the United States or the Commonwealth plans to seek indemnification pursuant to Paragraph 72.a., and shall consult with Settling Defendants prior to settling such claim.

73. Settling Defendants waive all claims against the United States and the Commonwealth for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site,

including, but not limited to, claims on account of construction delays.

74. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 60.b. of Section XV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of \$500,000, combined single limit, naming the United States and the Commonwealth as additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the Commonwealth certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA and the Commonwealth that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendants may satisfy the provisions of this Paragraph 74 if they submit to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph 74 demonstrating that Settling

Defendants are able to pay any claims arising out of Settling Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIV (Assurance of Ability to Complete Work). If Settling Defendants seek to utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 74, they must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond that required by the obligations of Section XIV (Assurance of Ability to Complete Work).

XIX. FORCE MAJEURE

75. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

76. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator within forty-eight (48) hours of when Settling Defendants first

knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA and the Commonwealth an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

77. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable

opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

78. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 74 and 75, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

79. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

80. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

81. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 82 or Paragraph 83.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 82 or 83. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 82 or 83, the parties to the dispute shall

follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 82 and 83.

82. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (i) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (ii) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Acting Deputy Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 82.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 82.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 82.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Acting Deputy Director of the Hazardous Site Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 82.a.

83. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 80, the Acting Deputy Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Acting Deputy Director's decision shall be binding on the Settling Defendants unless, within ten (10) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be

resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

84. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 88. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

85. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 86 and 87, fifty percent (50%) of which shall be payable to the United States, and fifty percent (50%) of which shall be payable to the Commonwealth, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the

specified time schedules established by and approved under this Consent Decree.

86. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$5,000 | 1st through 14th day |
| \$10,000 | 15th through 30th day |
| \$15,000 | 31st day and beyond |

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Remedy Review), Section IX (Quality Assurance, Sampling, and Data Analysis), Section XII (EPA Approval of Plans and Other Submissions), and Section XVI (Emergency Response).

87. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$1,000 | 1st through 14th day |
| \$2,000 | 15th through 30th day |
| \$3,000 | 30th day and beyond |

b. All requirements of this Consent Decree that are not identified in Paragraph 86.b. of this Consent Decree.

88. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 102 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$5,000.

89. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of

the noncompliance or completion of the activity. However, stipulated penalties shall not accrue:

(i) with respect to a deficient submission under Section XII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (ii) with respect to a decision by the Acting Deputy Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 82.b. or 83.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Acting Deputy Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (iii) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

90. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA and the Commonwealth may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

91. All penalties accruing under this Section shall be due and payable to the United States and the Commonwealth within thirty (30) days of the Settling Defendants' receipt from EPA of a

demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #03__ **[The second 2 numbers are the Region's Site/Spill Identifier number]**, the DOJ Case Number _____, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. All payments to the Commonwealth under this Section shall be paid by certified or cashier's check(s) made payable to (insert Commonwealth procedure).

92. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

93. Penalties shall continue to accrue as provided in Paragraph 88 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the Commonwealth within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the Commonwealth within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the Commonwealth into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Settling Defendants to the extent that they prevail.

94. a. If Settling Defendants fail to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 91.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that for any particular violation of this Consent Decree, the United States shall be limited to either demanding stipulated penalties pursuant to this Section XXI of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of

CERCLA.

95. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

96. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 97, 98, and 101 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 64 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 60.b. of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

97. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants: (i) to perform further response actions relating to the Site; or (ii) to reimburse the United States for additional costs of response if, prior to

Certification of Completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered; or
- b. information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

98. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants: (i) to perform further response actions relating to the Site or (ii) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
- b. information, previously unknown to EPA, is received,
in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

99. For purposes of Paragraph 97, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 97, the information and the

conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

100. Subject to the reservations provided in this Paragraph and Settling Defendants' full compliance with this Consent Decree, and in consideration of the past actions taken and of payments to be paid by Settling Defendants, the Commonwealth covenants not to sue or order or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Sections 507, 701, 1101 and 1102 of HSCA, 35 P.S. §§ 6020.507, 6020.701, 6020.702, 6020.1101, and 6020.1102, or any other statutory or common law provision for performance of the Work and recovery of Commonwealth Past Response Costs and Commonwealth Future Response Costs as defined in this Consent Decree. Except with respect to future liability under HSCA, this covenant not to sue shall take effect upon the signing of this Consent Decree by the Parties and the receipt by the Commonwealth of the payments required by Paragraph 64 of Section XVII (Reimbursement of Response Costs). With respect to future liability under HSCA, this covenant not to sue shall become effective upon Certification of Completion of the Work by the Commonwealth pursuant to Paragraph 61 of Section XV (Certification of Completion of the Work). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

101. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 104. The United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. claims seeking, or liability for, the securing and implementation of Supplemental Institutional Controls, and liability for any response costs incurred relating to the implementation or securing of Supplemental Institutional Controls;
- c. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- d. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. criminal liability;
- g. liability for violations of federal or state law; and
- h. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the Work);

102. Work Takeover. In the event EPA determines that Settling Defendants have ceased

implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 80, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

103. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS

104. Covenant Not to Sue. Subject to the reservations in Paragraph 105, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response activities at the Site, including claims based on EPA's and the Commonwealth's selection of response actions, oversight of response activities or approval of plans for such activities.

105. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

106. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

107. Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3)

or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 82.5 gallons or less of liquid materials containing hazardous substances.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

108. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

109. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Matters Addressed in this Consent Decree.

110. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the Commonwealth in writing no later than sixty (60) days prior to the initiation of such suit or claim.

111. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the Commonwealth within ten (10) days of service of the

complaint on them. In addition, Settling Defendants shall notify the United States and the Commonwealth within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

112. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

113. Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the Commonwealth, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

114. a. Settling Defendants may assert business confidentiality claims covering part or

all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document, record, or information; and (vi) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

115. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

116. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 61.b of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 61.b. of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

117. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the Commonwealth at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the Commonwealth, Settling Defendants shall deliver any such records or documents to EPA or the Commonwealth. If the United States has not responded to Settling Defendants' notice prior to the time Settling Defendants intend to destroy the records or documents, Settling Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide

the Plaintiffs with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

118. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVII. NOTICES AND SUBMISSIONS

119. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, and the Settling

Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # _____

and

Joan A. Johnson
Assistant Regional Counsel (3RC21)
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

Linda Dietz (3HW21)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the State:

[Name]
State Project Coordinator
[Address]

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

XXVIII. EFFECTIVE DATE

120. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

121. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

122. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the complete list of Non-Owner Settling Defendants.

"Appendix C" is the complete list of Owner Settling Defendants.

"Appendix D" is the Malvern TCE Superfund Site De Minimis Consent Order.

XXXI. COMMUNITY RELATIONS

123. Settling Defendants shall propose to EPA and the Commonwealth their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, Settling Defendants shall participate in the preparation

of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or relating to the Site.

XXXII. MODIFICATION

124. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Settling Defendants. All such modifications shall be made in writing.

125. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants. Modifications to the Work made pursuant to Paragraph 14 (Modification of the Work) may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

126. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of

CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

127. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

128. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

129. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

130. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXV. RELATIONSHIP BETWEEN CONSENT ORDER AND CONSENT DECREE

131. The United States and the Settling Defendants have agreed that certain portions of the Work shall commence in accordance with Administrative Order on Consent, EPA Docket No. _____, ("Consent Order") prior to the effective date of this Consent Decree.

Upon the effective date of this Consent Decree, and as set forth in Section III of the Consent Order, the Consent Order shall terminate. It is agreed by the Parties, that upon termination of the Consent Order due to entry of this Consent Decree, performance of work commenced under the Consent Order shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the Consent Order. To the extent that Settling Defendants have fulfilled obligations under the Consent Order that are also required by this Consent Decree, Settling Defendants shall also be deemed to have fulfilled such obligations under this Consent Decree.

SO ORDERED THIS ____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the
matter of United States v. Settling Defendants, relating
to the Malvern TCE Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Robert LeFevre
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

[Name]
Assistant United States Attorney

District of _____
U.S. Department of Justice
[Address]

W. MICHAEL McCABE
Regional Administrator
U.S. Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

WILLIAM C. EARLY
Acting Regional Counsel
U.S. Environmental Protection Agency,
Region III
841 Chestnut Building
Philadelphia, PA 19107

Joan A. Johnson
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region III
841 Chestnut Building
Philadelphia, PA 19107

United States v. Settling Defendants
Consent Decree Signature Page

FOR THE COMMONWEALTH OF PENNSYLVANIA

Date: _____

[Name]
[Title]
[Address]

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. Settling Defendants, relating
to the Malvern TCE Superfund Site.

FOR _____ COMPANY, INC. */

Date: _____
[Name -- Please Type]
[Title -- Please Type]
[Address -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____ [Please Type]
Title: _____
Address: _____
Tel. Number: _____

*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

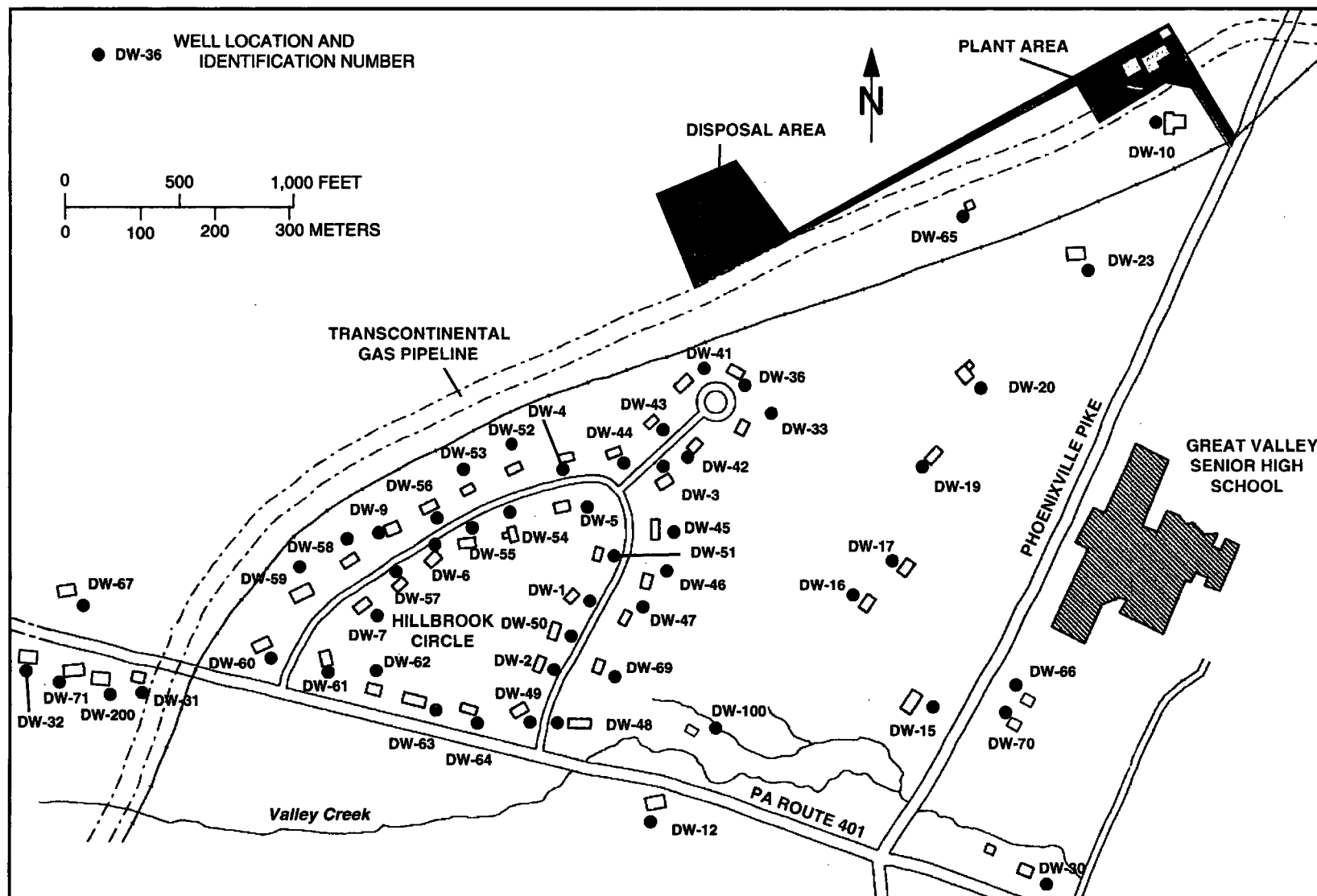


Figure 3. Location of domestic wells near the Malvern TCE Site, Chester County, Pennsylvania.

ATTACHMENT B

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Malvern TCE Superfund Site

Respondents

Proceeding Under Sections 106
and 122(a) of the Comprehensive
Environmental Response, Compensa-
tion, and Liability Act of
1980, as amended, 42 U.S.C.
§§ 9606 and 9622(a).

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**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN**

The Parties to this Administrative Order on Consent ["Consent Order"], [] ["Respondents"] and the United States Environmental Protection Agency ["EPA"], and the Commonwealth of Pennsylvania ["Commonwealth"], have agreed to the entry of this Consent Order, and the Respondents agree to undertake all actions required by this Consent Order pursuant to the terms and conditions of this Consent Order, including any attachments hereto.

I. GENERAL PROVISIONS

- 1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106 and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ["CERCLA"], 42 U.S.C. §§ 9606 and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580 [52 Fed. Reg. 2926 (January 29, 1987)]; and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C.
- 1.2 The Respondents consent to and will not contest EPA jurisdiction to issue and/or enforce this Consent Order.

- 1.3 On November 26, 1997, EPA issued a Record of Decision ["ROD"] selecting remedial action for implementation at the Malvern TCE Superfund Site in East Whiteland, Pennsylvania ["Site"]. All findings, conclusions and determinations supporting the legal requirements for issuance of this Consent Order under Section 106 of CERCLA, 42 U.S.C. § 9606, are set forth in the ROD. Issuance of this Consent Order is practicable and in the public interest within the meaning of Section 122(a) of CERCLA, 42 U.S.C. § 9622(a).
- 1.4 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.
- 1.5 All activities undertaken by Respondents pursuant to this Consent Order shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD. EPA has determined that activities conducted pursuant to this Consent Order and approved by EPA shall be considered to be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ["NCP"], 40 C.F.R. Part 300.
- 1.6 Respondents are jointly and severally responsible for carrying out all actions required by this Consent Order. In the event of the failure of one or more of the Respondents to implement the requirements of this Consent Order, the remaining Respondent(s) shall complete all such requirements.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Consent Order, the common objective of EPA, the Commonwealth and the Respondents is to expedite commencement and performance of Remedial Design, as defined in Paragraph 4, Section IV (Definitions) of the proposed consent decree appended hereto as Attachment 1 ["Consent Decree"], in accordance with the requirements of this Consent Order and the Consent Decree and to enter into an agreement that is legally binding upon all Parties until the Consent Decree is entered or in the event the Consent Decree is not entered pursuant to Paragraph 120, Section XXVIII (Effective Date) of the Consent Decree.
- 2.2 In an effort to simplify this Consent Order, the Parties have agreed that certain obligations of this Consent Order shall be expressed by reference to provisions of the Consent Decree. Each referenced provision of the Consent Decree, including each provision of the Consent Decree referenced therein, shall be incorporated herein by reference and shall be effective as if set forth in this Consent Order in its entirety. For those provisions, and solely for purposes of this Consent Order, the following definitions apply except as otherwise provided in this Consent Order:

- (a) The term "Settling Defendants" when used in the Consent Decree shall mean Respondents;
- (b) The term "Consent Decree" when used in the Consent Decree shall mean this Consent Order;
- (c) The term "Parties" when used in the Consent Decree shall mean Respondents and EPA and the Commonwealth (if appropriate);
- (d) All references to the date of lodging or entry of the Consent Decree shall mean the effective date of this Consent Order;
- (e) All references to Section XX (Dispute Resolution) of the Consent Decree shall mean Section XV (Dispute Resolution) of this Consent Order.

2.3 Except as provided herein, all terms shall be defined in the manner set forth in Paragraph 4, Section IV (Definitions) of the Consent Decree.

III. EFFECTIVE DATE AND TERMINATION

3.1 The effective date of this Consent Order shall be the third business day following the date on which EPA forwards a fully executed true and correct copy of this Consent Order to Respondents via overnight delivery.

3.2 This Consent Order shall terminate:

- (a) at the time the Consent Decree becomes effective pursuant to Section XXVIII of the Consent Decree;
- (b) at the time the Court denies the United States' petition to enter the Consent Decree; or
- (c) at the time the United States withdraws or withholds its consent from the Consent Decree because comments submitted during the public comment period established pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7, disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate; whichever is earlier.

3.3 Should this Consent Order be terminated under Section 3.2(b) or (c) above, such termination shall not affect Section VIII (Access), Section XV (Dispute Resolution),

Section XIX (Retention of Records) and Section XVII (Covenants by Respondents) of this Consent Order.

IV. PARTIES BOUND

- 4.1 This Consent Order shall apply to and be binding upon EPA, the Commonwealth, and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondents' responsibilities under this Consent Order.
- 4.2 Paragraph 3, Section III (Parties Bound) of the Consent Decree is incorporated herein by reference.

V. NOTICE TO THE COMMONWEALTH

- 5.1 Notice of issuance of this Consent Order has been given to the Commonwealth, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606(a).

VI. WORK TO BE PERFORMED

- 6.1 The following Consent Decree provisions are incorporated herein by reference:
- (a) Paragraph 8, Section V (General Provisions)
 - (b) Paragraph 10, Section VI (Performance of the Work by Settling Defendants)
 - (c) Paragraph 11 a., b. and c., Section VI (Performance of the Work by Settling Defendants)
 - (d) Paragraph 14, Section VI (Performance of the Work by Settling Defendants), except that modifications under such paragraph can only be required for remedial design activities.
 - (e) Paragraph 15, Section VI (Performance of the Work by Settling Defendants)
 - (f) Paragraph 102, Section XXII (Covenants Not to Sue by Plaintiff[s])

VII. QUALITY ASSURANCE

- 7.1 Section IX (Quality Assurance, Sampling and Data Analysis) of the Consent Decree is incorporated herein by reference.

VIII. ACCESS

- 8.1 Paragraphs 34 and 35, to the extent these provisions pertain to acquiring access to the Site and other property for the purpose of conducting any activity relating to the Consent Decree and/or executing and recording access easements, and Paragraph 38, Section X (Access and Institutional Controls) of the Consent Decree are incorporated herein by reference.

IX. REPORTING REQUIREMENTS

- 9.1 Section XI (Reporting Requirements) of the Consent Decree is incorporated herein by reference.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

- 10.1 Section XII (EPA Approval of Plans and other Submissions) of the Consent Decree is incorporated herein by reference.

XI. PROJECT COORDINATORS

- 11.1 Section XIII (Project Coordinators) of the Consent Decree is incorporated herein by reference.

XII. EMERGENCY RESPONSE

- 12.1 Section XVI (Emergency Response) of the Consent Decree is incorporated herein by reference.

XIII . INDEMNIFICATION

- 13.1 Paragraphs 72 and 73, Section XVIII (Indemnification and Insurance) of the Consent Decree are incorporated herein by reference.

XIV . FORCE MAJEURE

- 14.1 Section XIX (Force Majeure) of the Consent Decree is incorporated herein by reference.

XV. DISPUTE RESOLUTION

- 15.1 For purposes of this Section XV (Dispute Resolution), the term "United States" as used in Section XX (Dispute Resolution) of the Consent Decree shall mean EPA.

- 15.2 The following Consent Decree provisions are incorporated herein by reference:

- (a) Paragraph 79, Section XX (Dispute Resolution)
- (b) Paragraph 80, Section XX (Dispute Resolution)
- (c) Paragraph 81.a. and b., Section XX (Dispute Resolution)
- (d) Paragraph 81.c., Section XX (Dispute Resolution) (first sentence only)
- (e) Paragraph 82, Section XX (Dispute Resolution)
- (f) Paragraph 82.a., Section XX (Dispute Resolution)
- (g) Paragraph 82.b., Section XX (Dispute Resolution) (first sentence only)
- (h) Paragraph 82.d., Section XX (Dispute Resolution) (first sentence only)
- (i) Paragraph 83, Section XX (Dispute Resolution)
- (j) Paragraph 83.a., Section XX (Dispute Resolution) (first sentence only). EPA's decision shall be binding on Respondents. Respondents shall bear the burden of coming forward with evidence and the burden of persuasion.

- (k) Paragraph 84, Section XX (Dispute Resolution), except that the phrase "as provided in Paragraph 88" in the second sentence shall be omitted.

XVI. STIPULATED PENALTIES

- 16.1 Paragraphs 85-92 and 94-95, Section XXI (Stipulated Penalties) of the Consent Decree are incorporated herein by reference, except that the situation referred to in subsection (c) of paragraph 89 shall not apply under this Consent Order.
- 16.2 Stipulated penalties shall continue to accrue during any dispute resolution period. In the event Respondents do not prevail upon resolution of a dispute, Respondents shall pay all stipulated penalties owed within thirty (30) days of receipt of EPA's decision regarding the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute. Stipulated penalties shall not be owed or collectible for the matter, or that portion of the matter, in dispute to the extent Respondents prevail.

XVII. COVENANTS BY RESPONDENTS

- 17.1 Section XXIII (Covenants by Settling Defendants) of the Consent Decree is incorporated herein by reference.

XVIII. ACCESS TO INFORMATION

- 18.1 Section XXV (Access to Information) of the Consent Decree is incorporated herein by reference.

XIX. RETENTION OF RECORDS

- 19.1 Section XXVI (Retention of Records) of the Consent Decree is incorporated herein by reference.

XX. NOTICES AND SUBMISSIONS

- 20.1 Section XXVII (Notices and Submissions) of the Consent Decree is incorporated herein by reference.

XXI. COMMUNITY RELATIONS

- 21.1 Section XXXI (Community Relations) of the Consent Decree is incorporated herein by reference.

XXII. MODIFICATION

- 22.1 Paragraph 124, Section XXXII of the Consent Decree is incorporated herein by reference.
- 22.2 No modifications shall be made to the provisions of this Consent Order without written notification to, and approval of, the Parties.
- 22.3 Modifications to the Remedial Design Work Plan may be made by mutual agreement of the EPA and Respondents' Project Coordinators. Any such modifications must be in writing and signed first by the Respondents' Project Coordinator and then by the EPA Project Coordinator. The effective date of the modification shall be the date on which the modification is signed by the EPA Project Coordinator.

IT IS SO AGREED AND ORDERED.

**W. Michael McCabe
Regional Administrator
EPA Region III**

Date

FOR THE RESPONDENTS:

Each of the undersigned hereby certifies that [he/she] is authorized to execute this Consent Order on behalf of the Respondent for which [he/she] has signed and to bind said Respondent to the terms and conditions of this Consent Order.

[Respondent]**Date****[Name]****[Title]**

ATTACHMENT C

MALVERN TCE SUPERFUND SITE
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